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Attorneys for Axis Reinsurance Company

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

REFCO, INC., et al.,

Debtors.

-----X
AXIS REINSURANCE COMPANY

Plaintiff,

-against-

PHILLIP R. BENNETTT, LEO R. BREITMAN,
NATHAN GANTCHER, TONE GRANT,
DAVID V. HARKINS, SCOTT L. JAECKEL,
DENNIS A. KLEJNA, THOMAS H. LEE,
SANTO C. MAGGIO, JOSEPH MURPHY,
RONALD L. O'KELLEY, SCOTT A SCHOEN,
WILLIAM M. SEXTON, GERALD SHERER,
PHILIP SILVERMAN, ROBERT C. TROSTEN,

Defendants.

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**DESIGNATION OF ITEMS IN RECORD ON
APPEAL AND STATEMENT OF ISSUES PRESENTED**

Axis Reinsurance Company ("Axis"), the Plaintiff in the above-captioned action and the Appellant on appeal, by counsel, hereby respectfully designates the following items to be

included in the record on appeal, all of which are submitted herewith as Exhibits to the annexed Declaration of Joan M. Gilbride, and herein sets forth a statement of the issue it intends to present on appeal:

ITEMS DESIGNATED

1. Axis Reinsurance Company Securexcess Policy RNN 506300 (the "Axis Policy"), attached to Declaration of Joan M. Gilbride (annexed hereto) ("Gilbride App. Dec.") as Exhibit A.
2. U.S. Specialty Insurance Company Directors, Officers and Corporate Liability Insurance Policy 24-MGU-05-A10821, attached to Gilbride App. Dec. as Exh. B.
3. The Adversary Action Complaint (without exhibits) filed by Axis on May 23, 2007, attached to Gilbride App. Dec. as Exh. C.
4. Memorandum in Support of Defendants Klejna, Murphy, Sexton, Sherer and Silverman's Motion to Require Axis Reinsurance Company to Pay Defense Costs and for Relief from the Automatic Stay (without exhibits), filed July 13, 2007, attached to Gilbride App. Dec. as Exh. D.
5. Objection of Axis Reinsurance Company to Defendants' Application for a Preliminary Injunction Ordering Advancement of Defense Costs (without exhibits), filed August 13, 2007, attached to Gilbride App. Dec. at Exh. E.
6. Reply of Defendants Klejna, Murphy, Sexton, Sherer and Silverman in Support of Their Motion to Require Axis Reinsurance Company to Pay Defense Costs and for Relief from the Automatic Stay, filed August 27, 2007, attached to Gilbride App. Dec. as Exh. F.
7. The Answer and Counterclaims of Phillip Silverman, filed in the United States Bankruptcy Court, Southern District of New York, on July 13, 2007, attached to Gilbride App. Dec. as Exh. G.

8. The Answer and Counterclaims of Sexton and Sherer, filed in the United States Bankruptcy Court, Southern District of New York, on July 13, 2007, attached to Gilbride App. Dec. as Exh. H.

9. The Amended Answer and Counterclaims of Klejna and Murphy, filed in the United States Bankruptcy Court, Southern District of New York, on July 31, 2007, attached to Gilbride App. Dec. as Exh. I.

10. The unofficial preliminary draft transcript of August 30, 2007 oral argument on the Application for a Preliminary Injunction Ordering Advancement of Defense Costs and Motion to Dismiss, attached to Gilbride App. Dec. as Exh. J.

11. The August 31, 2007 Order of Judge Robert D. Drain granting Defendants' Application for a Preliminary Injunction Ordering Advancement of Defense Costs by Axis, attached to Gilbride App. Dec. as Exh. K.

12. The August 31, 2007 Order of Judge Robert D. Drain granting Defendants' Motion to Dismiss the Axis Complaint, attached to Gilbride App. Dec. as Exh. L.

13. The Form 8-K filed by Refco, Inc. (signed by Movant Klejna) with the United States Securities and Exchange Commission on October 11, 2005 (with exhibits), attached to Gilbride App. Dec. as Exh. M.

14. The March 6, 2006 letter from Wayne E. Borgeest, Esq. to Pam Sylwestrzak, attached to Gilbride App. Dec. as Exh. N.


15. The Warranty Letter signed by Bennett on behalf of all insureds under the Axis Policy on January 21, 2005, attached to Gilbride App. Dec. as Exh. O.

ISSUE PRESENTED

1. Was the Bankruptcy Court correct in granting Defendants' Application for a Preliminary Injunction Ordering Advancement by Axis Reinsurance Company of Defense Costs, when the Axis Policy specifically states that Axis may only pay *covered* Defense Costs, and there is an issue at present as to whether any of the loss sought by the Defendants, including Defense Costs, is covered under the Axis Policy?

Dated: September 4, 2007

Signed: _____


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